

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY G. BROWER and U.S. POSTAL SERVICE,
MAIL PROCESSING ANNEX, Oklahoma City, OK

*Docket No. 98-1356; Submitted on the Record;
Issued April 10, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

On November 15, 1994 appellant, then a 52-year-old clerk, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to: disputes regarding leave and a request for administrative time to see a union steward; being asked to provide medical documentation for sick leave; proposed changes in his duty shift and work location; denial of a request for light duty; being asked to meet a production goal set by management; being disciplined; being asked about his work restrictions; dissatisfaction concerning the handling of safety hazard reports; dissatisfaction with performing a sedentary job; believing that his supervisors and coworkers were not sympathetic to his physical problems; being harassed by supervisors and coworkers; trying to perform his job duties with problems due to foot [his] condition;⁷ being upset because he was in the Federal Building in Oklahoma City to file paperwork regarding his retirement application the day before the 1995 bombing; having fears that he might experience a heart attack; having feelings of job insecurity and experiencing problems in his personal and family life.

By decision dated February 6, 1996, the Office denied appellant's claim. By letter dated February 25, 1996, he requested an oral hearing before an Office hearing representative.

On September 24, 1995 a hearing was held before an Office hearing representative at which time appellant testified. By decision dated December 13, 1996, the Office hearing representative set aside the Office's February 6, 1996 decision and remanded the case for further development. The Office hearing representative found two factors which occurred in the performance of duty: (1) that appellant developed a bilateral foot condition causally related to his employment for which he underwent surgery and experienced pain and limitations; and (2) that he sustained an injury to his right ankle at work on July 11, 1993.

⁴ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁶ See *Margaret S. Krzycki*, *supra* note 5.

⁷ Appellant had an accepted employment injury in 1991 consisting of bilateral Morton's neuroma of the feet.

By decision dated July 25, 1997, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that his claimed emotional condition was causally related to compensable factors of his employment.

Regarding appellant's allegations regarding requests for leave and a request for administrative time to see a union steward, being asked to provide medical documentation for sick leave, proposed changes in his duty shift and work location, being denied a request for light duty, being asked to meet a production goal set by management, disciplinary actions, being asked about his work restrictions and the handling of safety hazard reports, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁹ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹⁰ In this case, there is insufficient evidence of error or abuse in the employing establishment's handling of these administrative or personnel matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's feelings of job insecurity, the Board has held that job insecurity is not a compensable factor of employment.¹¹

Regarding appellant's allegation that he was upset because he was in the Federal Building in Oklahoma City to file paperwork for his retirement application the day before the 1995 bombing, his allegation regarding problems in his personal and family life and his allegation regarding his fears that he might experience a heart attack, these allegations bear insufficient relationship to appellant's regular or specially assigned work duties and are therefore not deemed compensable factors of employment.

Appellant has also alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition, including a confrontation with supervisor Donnie George on May 8, 1995 in which appellant used profanity and slammed down metal trays. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹² However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere

⁸ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See *Sharon K. Watkins*, 45 ECAB 290, 296 (1994).

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

perceptions of harassment or discrimination are not compensable under the Act.¹³ In the present case, there is insufficient evidence to establish that appellant was harassed or discriminated against by his supervisors or coworkers.¹⁴ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's dissatisfaction with performing a sedentary job and his belief that his supervisors and coworkers were not sympathetic to his physical problems, the Board has held that an employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable under the Act.¹⁵

Regarding appellant's foot condition, the Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.¹⁶

The Board notes that in a decision dated December 13, 1996 an Office hearing representative found that appellant's work-related bilateral foot condition for which he underwent surgery and experienced pain and limitations and his work-related right ankle injury, sustained on July 11, 1993, were compensable factors of employment for which appellant would be entitled to compensation benefits if supported by the medical evidence of record.

In a report dated April 19, 1995, Dr. W. Dale Hall, a podiatrist, related that appellant underwent surgery on his feet in 1991 and 1994 and had resulting work limitations. He related appellant's complaints of extreme pain in both feet and stated that he appeared to be depressed due to his foot pain.

In a report dated June 6, 1995, Marcia S. Moore, Ph.D., a licensed clinical psychologist, provided a history of appellant's condition and the results of a mental status examination and diagnosed a major depressive disorder superimposed on dysthymia and obsessive-compulsive personality disorder. She related appellant's feelings of guilt and shame because of difficulties performing his job due to his foot condition. Dr. Moore stated her opinion that appellant's chronic foot pain compromised his functioning and contributed to his depressive symptoms.

In a report dated June 25, 1997, Dr. Marcus Barker, a psychiatrist and Office referral physician, provided a history of appellant's condition and the results of a mental status examination. He diagnosed schizoaffective disorder and generalized anxiety disorder and stated:

“[Appellant's] primary complaints at this point are that his feet hurt and that he is depressed because he is not able to function. The degree of impairment due to his feet would have to be determined by an orthopedic surgeon. I think [appellant's]

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁵ *See David M. Furey*, 44 ECAB 302, 306 (1992).

¹⁶ *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

overall depression cannot be attributed simply to his feet. He does have a diagnosis, in my professional opinion, of major depression which is the result of many of the disappointments in his life including his problems with his feet hurting.”

In a supplemental report dated July 18, 1997, Dr. Barker related that appellant had become depressed when he sustained his foot condition which had required surgery. He stated:

“If in fact [appellant’s] feet are still hurting as much as he states that they have been all along, then the depression is a continuation of the depression he had then. If in fact there is no real orthopedic basis for the feet hurting, then this has become more of an obsession and hypochondriacal issue and the depression that is present is certainly not because his feet hurt but because of all the other factors in his life.”

The Board finds that further development is required in this case as to the issue of whether appellant’s work-related bilateral foot condition caused or aggravated his depression. While the medical reports are not sufficient to establish that appellant’s emotional condition was caused or aggravated by his bilateral foot condition, they are sufficient to require further development by the Office.¹⁷

On remand, the Office should refer appellant to an appropriate medical specialist to determine whether there is a medical basis for appellant’s continuing complaints of foot pain. Following such further development as the Office deems necessary, the Office should issue a *de novo* decision as to whether appellant sustained an emotional condition caused or aggravated by his foot condition.

The Board also notes that the Office has accepted as a compensable factor of employment appellant’s work-related injury to his right ankle on July 11, 1993 but the Office has not developed the medical evidence to determine whether his emotional condition was caused or aggravated by this compensable factor of employment. On remand, following such further development as the Office deems necessary, the Office should issue a *de novo* decision as to whether the employment-related ankle injury caused or aggravated appellant’s emotional condition.

The decision of the Office of Workers’ Compensation Programs dated July 25, 1997 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
April 10, 2000

¹⁷ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member